

## **IC 30-2-15**

### **Chapter 15. Total Return Unitrusts**

#### **IC 30-2-15-1**

##### **"Current valuation year"**

Sec. 1. As used in this chapter, "current valuation year" means the year of the trust for which the unitrust amount is being determined.  
*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-2**

##### **"Income trust"**

Sec. 2. As used in this chapter, "income trust" means a trust created by an inter vivos or a testamentary instrument that has terms that describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.  
*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-3**

##### **"Net fair market value"**

Sec. 3. As used in this chapter, "net fair market value" means the fair market value of each asset comprising the trust reduced by the liens, debts, and encumbrances of the trust, regardless of whether the liens, debts, and encumbrances are allocable to a specific asset.  
*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-4**

##### **"Total return unitrust"**

Sec. 4. As used in this chapter, "total return unitrust" means an income trust that has been converted to a total return unitrust in accordance with this chapter.  
*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-5**

##### **"Trustee"**

Sec. 5. As used in this chapter, "trustee" refers to the:

- (1) trustee of a trust; or
- (2) if at least two (2) persons are acting as trustee, a majority of the trustees.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-6**

##### **"Unitrust amount"**

Sec. 6. As used in this chapter, "unitrust amount" means an amount computed as a percentage of the fair market value of the trust as set forth in this chapter.  
*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-7**

##### **"Unitrust rate"**

Sec. 7. As used in this chapter, "unitrust rate" means the

percentage of the fair market value of the trust that is determined under section 15 of this chapter and used to calculate the unitrust amount.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-8**

##### **"Year"**

Sec. 8. As used in this chapter, "year" means a calendar year.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-9**

##### **Trustee's power to convert trust, reconvert trust, and change unitrust rate**

Sec. 9. A trustee may:

- (1) release the trustee's power to adjust between trust principal and income under IC 30-2-14-15 and convert an income trust to a total return unitrust;
- (2) reconvert a total return unitrust to an income trust; or
- (3) change the unitrust rate;

if the requirements of this chapter are met.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-10**

##### **Acting without court approval**

Sec. 10. (a) Unless expressly prohibited in the governing trust instrument, and if the trustee would not be prohibited from exercising the power to adjust under IC 30-2-14-15(a) because at least one (1) of the provisions of IC 30-2-14-15(c)(3) through IC 30-2-14-15(c)(7) would be applicable, a trustee may, without the approval of the court having jurisdiction of the trust, take an action set forth in section 9 of this chapter if:

- (1) the trustee sends written notice of the trustee's proposed action to:

- (A) the settlor of the trust, if the settlor is living; and
- (B) the trust beneficiaries described in IC 30-2-14-16(b); and

- (2) no person who receives a written notice under subdivision (1) objects to the proposed action.

- (b) To the extent applicable, the notice must:

- (1) state the trustee's intent to release the power to adjust under IC 30-2-14-15 and to convert the trust to a total return unitrust; and

- (2) describe how the unitrust will operate and any decisions made by the trustee under this chapter.

In the notice, the trustee shall also specify an effective date of the conversion, reconversion, or change in the unitrust rate.

(c) A person who receives notice under subsection (a) of a trustee's proposed action may object to the proposed action by delivering a written objection to the trustee not later than sixty (60) days after receiving the notice.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-11**

#### **Petition by trustee**

Sec. 11. If a trustee:

- (1) receives an objection under section 10 of this chapter;
- (2) elects not to proceed under section 10 of this chapter; or
- (3) is not able to proceed under section 10 of this chapter because the trustee does not have the power to adjust under IC 30-2-14-15(c)(5), IC 30-2-14-15(c)(6), or IC 30-2-14-15(c)(7);

the trustee may petition the court having jurisdiction of the trust for an order that allows the trustee to take an action described in section 9 of this chapter.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-12**

#### **Petition by trust beneficiary**

Sec. 12. A trust beneficiary described in IC 30-2-14-16(b) may petition the court having jurisdiction of the trust to order the trustee to take an action described in section 9 of this chapter, if the action would not alter any amount in the trust that is permanently set aside for charitable purposes unless both income and principal are set aside.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-13**

#### **When court shall approve conversion, reconversion, or change in rate**

Sec. 13. If the court finds that the conversion, reconversion, or change in the unitrust rate under this chapter will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, the court shall approve the conversion, reconversion, or change in the unitrust rate under this chapter.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-14**

#### **Reconversion's release of power to adjust void**

Sec. 14. This section applies if a total return unitrust is reconverted to an income trust. The trustee's release of the trustee's power under IC 30-2-14-15, if it was given at the time the trust was converted to a total return unitrust, is void when the trust is reconverted.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-15**

#### **Conversion to unitrust; unitrust rate**

Sec. 15. (a) When a trustee gives notice of a proposed action under section 10 of this chapter to convert a trust to a unitrust, the trustee must include the unitrust rate in the notice of proposed action.

(b) If:

- (1) the trustee proposes a unitrust rate of four percent (4%) in

the notice of proposed action; and

(2) no beneficiary entitled to notice of the proposed action makes a written objection to the unitrust rate under section 10 of this chapter;

the unitrust rate must be four percent (4%).

(c) A trust may have a unitrust rate that represents a reasonable current return from the trust and best reflects the goals of the trust and the intent of the settlor or testator, but that is not less than three percent (3%) or more than five percent (5%), if the rate is:

(1) agreed upon in writing by the trustee and the beneficiaries entitled to notice under section 11 of this chapter; or

(2) ordered by the court having jurisdiction of the trust.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-16**

#### **Unitrust amount; initial two years of trust**

Sec. 16. For the first two (2) years of the trust or the first two (2) years after the conversion to a total return unitrust under this chapter, the unitrust amount for a current valuation year of the trust must be the product of the unitrust rate multiplied by the net fair market values of the assets held in the trust on the first business day of the current valuation year.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-17**

#### **Unitrust amount; successive years**

Sec. 17. Beginning with the third year of the trust, and each year after that year, the unitrust amount for a current valuation year of the trust is the product of the unitrust rate multiplied by the average of the net fair market values of the assets held in the trust on the first business day of:

(1) the current valuation year; and

(2) each of the two (2) years of the trust immediately preceding the current valuation year.

*As added by P.L.3-2003, SEC.2.*

### **IC 30-2-15-18**

#### **Net fair market value of unitrust assets**

Sec. 18. In determining the net fair market value of each asset held in the trust under sections 16 and 17 of this chapter, the value of the following may not be included:

(1) Any residential property or tangible personal property that, as of the first business day of the current valuation year, at least one (1) income beneficiary of the trust has or had the right to:

(A) occupy; or

(B) possess or control;

other than in a capacity as trustee. However, the right of occupancy or the right to possession or control shall be considered to be the unitrust amount with respect to the residential property or the tangible personal property.

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on that investment. The return on the investment shall be distributable to the beneficiary.

(3) Any assets that are held in a testator's estate.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-19**

##### **Trustee powers**

Sec. 19. (a) The trustee may exclude any assets for which the fair market value is not readily determinable from the determination of net fair market value of trust assets. However, the terms of the trust continue to apply to these assets.

(b) The trustee may determine any other matter necessary for the proper functioning of the total return unitrust.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-20**

##### **Prohibited reduction in unitrust amount**

Sec. 20. The unitrust amount may not be reduced for expenses that would be deducted from income if the trust were not a total return unitrust.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-21**

##### **Adjusting net fair market values of assets**

Sec. 21. For purposes of section 16 of this chapter, the net fair market values of the assets held in trust on the first business day of a proper valuation year shall be adjusted to reflect any:

(1) reduction, in the case of a distribution or payment; or

(2) increase, in the case of a receipt;

for the prior valuation year as if the distribution, payment, or receipt had occurred on the first day of the prior valuation year.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-22**

##### **Prorating unitrust amount in short year**

Sec. 22. (a) As used in this section, "short year" refers to a part of a calendar year that:

(1) begins when the interest of the current beneficiary or class of current beneficiaries begins; or

(2) ends when the interest of the current beneficiary or class of beneficiaries ends.

(b) The trustee shall prorate the unitrust amount on a daily basis in a short year.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-23**

##### **Unitrust amount's satisfying tax law requirement of preserving tax benefit**

Sec. 23. (a) This section applies to the following trusts:

(1) A trust for which a marital deduction has been taken for federal tax purposes during the lifetime of the spouse for whom the trust was created under Section 2056 or 2523 of the Internal Revenue Code.

(2) A trust to which the generation-skipping transfer tax due under Section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

(b) To the extent necessary to satisfy a tax law requirement or to preserve a tax benefit, the unitrust amount may not be less than the net income of the trust. Net income of the trust shall be determined as if the trust were not a unitrust.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-24**

##### **Construing the governing instrument**

Sec. 24. After the income trust is converted to a total return unitrust under this chapter, both of the following apply:

(1) The term "income" in the governing instrument means the unitrust amount plus any income from the trust assets excluded from the determination of net fair market value under sections 18 and 19 of this chapter.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with this chapter.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-25**

##### **Paying the unitrust amount**

Sec. 25. (a) Except as provided in subsection (b), and unless otherwise provided by the governing instrument, the unitrust amount shall be considered to have been paid from net income. The net income of the trust shall be determined as if the trust were not a unitrust.

(b) To the extent that:

(1) net income is insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized short term capital gains;

(2) net income and net realized short term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized long term capital gains; and

(3) net income and net realized short term and net long term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from the principal of the trust.

*As added by P.L.3-2003, SEC.2.*

#### **IC 30-2-15-26**

##### **Immunity of trustee**

Sec. 26. (a) A trustee who in good faith acts or fails to act under

section 9 of this chapter is not liable to any person affected by the action or inaction, regardless of whether the person:

- (1) received written notice as provided in section 10 of this chapter; and
- (2) was under legal disability at the time of the delivery of the notice.

(b) The exclusive remedy of a person affected by the action or inaction of a trustee is to obtain an order of the court having jurisdiction of the trust that directs the trustee to take an action described in section 9 of this chapter.

*As added by P.L.3-2003, SEC.2.*